

20:69:03:19. Advance compensation. If an agency agreement provides for compensation for services for other than a sale or lease of an interest in real property, the licensee may collect compensation for those services before closing the sale or lease of the interest in the real property. If a client or customer agrees in writing to allow a broker to receive compensation for any agreed upon service before closing the sale or lease of an interest in real property, the compensation must be placed in the broker's trust account until performance of services has been consummated or terminated by written agreement from both parties.

Source: 16 SDR 36, effective August 29, 1989; transferred from § 20:56:05:21.01, 20 SDR 18, effective August 16, 1993.

General Authority: SDCL 36-21A-84.

Law Implemented: SDCL 36-21A-84.

CHAPTER 20:69:05

DISCIPLINARY PROCEEDINGS

Section

20:69:05:01	Complaints authorized -- Procedure following filing -- Electronic filing.
20:69:05:02	Dismissal of complaint.
20:69:05:03	Informal consultation.
20:69:05:04	Assurance of voluntary compliance <u>or consent order</u> .
20:69:05:05	Formal proceedings.
20:69:05:06	Contents of commission complaint.
20:69:05:07	Date of hearing.
20:69:05:08	Answer.
20:69:05:09	Disqualification.
20:69:05:10	Per diem and mileage.
20:69:05:11	Final action by commission.

Cross-Reference: Procedure to follow in licensing matters, SDCL 1-26-16 to 1-26-19.1.

20:69:05:04. Assurance of voluntary compliance or consent order. In the enforcement of this chapter, the commission may accept an assurance of voluntary compliance or a consent order regarding any act or practice alleged to violate this article or SDCL ~~Chapter~~ chapter 36-21A from a person who has engaged in, is engaging in, or is about to engage in such an act or practice.

The assurance or consent order must be in writing and is subject to the approval of the commission. The assurance or consent order may include a stipulation for the voluntary payment by the alleged violator of the costs of the investigation and any amount necessary to restore to a person money or property which may have been acquired by the alleged violator by means of such an act or practice.

~~Assurance~~ The assurance of voluntary compliance is not considered an admission to a violation for any purpose; however, The consent of a licensee to a consent order constitutes an admission of a violation for any purpose. ~~proof~~ Proof of failure to comply with the assurance of voluntary compliance or consent order is prima facie evidence of a violation of this chapter.

Source: 10 SDR 54, effective December 5, 1983; 12 SDR 102, effective December 22, 1985; 12 SDR 151, 12 SDR 155, effective July 1, 1986; transferred from § 20:56:06:03.01, 20 SDR 18, effective August 16, 1993.

General Authority: SDCL ~~36-21A-89~~ 36-21S-89(5).

Law Implemented: SDCL 1-26-24, 1-26-29, 36-21A-68, 36-21A-86.

CHAPTER 20:69:06

REAL ESTATE AUCTIONEER LICENSES

Section

20:69:06:01 ~~Requirements for real estate auction~~ Transferred.

20:69:06:01.01 Definitions.

20:69:06:02 Auctioneers -- License required.

20:69:06:03 Qualifications of applicants.

20:69:06:04 Duties of auctioneer.

20:69:06:05 Listings to be in writing.

20:69:06:06 Auction advertisements.

20:69:06:07 Auction sale procedure.

20:69:06:07.01 Auction with reserve sale procedure.

20:69:06:07.02 Absolute auction sale procedure.

20:69:06:07.03 Secured party or lien holder not prohibited from bidding at an absolute auction – Procedures.

20:69:06:07.04 Internet auction sale procedure.

20:69:06:08 Auctioneer to maintain records.

20:69:06:09 Certain ~~bids~~ acts prohibited.

20:69:06:10 Rules applicable to real estate ~~licensees~~ brokers, broker associates, and salespersons.

~~20:69:06:01. Requirements for real estate auction. Real estate auctions may not begin until the announced and advertised time, date, and place of the sale. All efforts of~~

~~selling shall cease at the end of the sale or at the time of the announcement of no sale.~~

Transferred to § 20:69:06:07.

~~**Source:** 5 SDR 12, effective August 14, 1978; 10 SDR 54, effective December 5, 1983; 12 SDR 151, 12 SDR 155, effective July 1, 1986; transferred from § 20:56:12:00.01, 20 SDR 18, effective August 16, 1993.~~

~~**General Authority:** SDCL 36-21A-89.~~

~~**Law Implemented:** SDCL 36-21A-1, 36-21A-6, 36-21A-27, 36-21A-30, 36-21A-47.~~

20:69:06:01.01. Definitions. Terms used in this chapter mean:

(1) “Absentee bid,” a procedure that allows a bidder to participate in the bidding without being physically present;

(2) “Absolute auction,” an auction in which the property is sold to the highest qualified bidder with no limiting conditions or amount. An absolute auction is also known as an auction without reserve;

(3) “Auction with reserve,” an auction in which the seller or seller’s representative retains the right to establish a minimum price, to accept or decline any and all bids or to withdraw the property at any time prior to the announcement of the completion of the sale by the auctioneer. An auction with reserve is also known as a reserve auction or as an auction subject to confirmation;

(4) “Bid,” a prospective buyer's indication or offer of a price the prospective buyer is willing to pay to purchase property at auction;

(5) “Buyer's premium,” an advertised percentage of the high bid or flat fee added to the high bid to determine the total contract price to be paid by the buyer;

(6) “Internet auction,” an auction in which a prospective buyer bids using electronic media. The term also includes an auction in which the auctioneer conducts the auction using electronic media;

(7) “Minimum bid auction,” an auction in which the auctioneer accepts bids at or above a disclosed price. A minimum bid auction is separate and distinct from an absolute auction or an auction with reserve.

(8) “Rafted bid,” or “puffing of a bid,” a fictitious bid used to increase the final sales price;

(9) “Reserve,” the minimum price that a seller is willing to accept for a property to be sold at auction;

(10) "Shill," a person who pretends to have no association with the auctioneer or seller and gives the impression of being an enthusiastic bidder by puffing of a bid.

Source:

General Authority: SDCL 36-21A-89(7).

Law Implemented: SDCL 36-21A-1, 36-21A-89.

20:69:06:05. Listings to be in writing. ~~All contracts~~ Any contract listing a property for sale with an auctioneer must be in writing. Each written listing agreement shall show the legal description of the property; the compensation to be received by the auctioneer; the requirement that the date, time, and place of sale the auction will be determined by written mutual agreement between seller and auctioneer; the name of the attorney, bank, title company, or broker conducting the closing; the type of auction procedure; any encumbrances and reserves; and the signatures of all parties. At the time of securing the listing, the auctioneer who obtains it shall give the person or persons signing the listing a true copy of it. An auction listing does not need to include a listing price. ~~Auction listings terminate~~ An auction listing terminates at the completion culmination of the ~~closing of the sale~~ bidding if the auctioneer will not be representing the seller through the closing of the transaction or if the seller doesn't receive an acceptable bid, ~~at the culmination of bidding.~~ If the auctioneer prepares the purchase agreement, the auction listing extends to and includes the date of closing under the

purchase agreement unless the buyer and seller terminate the purchase agreement prior to closing of the transaction.

Source: 4 SDR 71, effective April 30, 1978; 10 SDR 54, effective December 5, 1983; 12 SDR 151, 12 SDR 155, effective July 1, 1986; 15 SDR 100, effective January 10, 1989; transferred from § 20:56:12:22, 20 SDR 18, effective August 16, 1993; 26 SDR 41, effective September 29, 1999; 30 SDR 40, effective September 30, 2003.

General Authority: SDCL 36-21A-89(7), 36-21A-130.

Law Implemented: SDCL 36-21A-47, 36-21A-71, 36-21A-130.

20:69:06:06. Auction advertisements. An auctioneer who advertises shall comply with the following requirements:

- (1) Auction advertisements must disclose the names and types of licenses held by all licensees involved in the transaction;
- (2) If an auction advertisement includes real estate and personal property and the personal property is to be sold by an auctioneer not licensed under this chapter or SDCL chapter 36-21A, then the auction advertisement may not be displayed in such a manner to give the impression that the real estate is being sold by the unlicensed auctioneer;
- (3) No auction may be advertised as absolute nor may any advertising contain the term, absolute auction, or the term, absolute, or any term with a similar meaning, nor may any licensee offer or sell any property at absolute auction unless:

(a) Except for current tax obligations or easements, there are no unrecorded liens or encumbrances on the property in favor of any other person, firm, or corporation;

(b) Each holder of a lien or encumbrance, by execution of the auction contract or other written agreement provided to the auctioneer, agrees to the absolute auction without regard to the amount of the highest bid or to the identity of the highest bidder; or

(c) A person, firm, trust, or estate, by execution of the auction listing contract or other written agreement provided to the auctioneer guarantees the complete discharge and satisfaction of all liens and encumbrances, as applicable, immediately after the absolute auction or at the closing without regard to the amount of the highest bid or to the identity of the highest bidder;

(4) When advertising an absolute auction, there must be the bona fide intention at the time of the advertising and at the time of the auction sale to transfer ownership of the property. The intent must exist without reliance on any agreement that any particular bid level must be reached;

(5) If the auction is a minimum bid auction, the minimum price must be stated in any advertising and promotional material and announced at the auction;

(6) Advertising for a sale at which some parcels will be auctioned with reserve and some items will be auctioned without reserve shall clearly and conspicuously indicate this fact to the public. In written advertisements for such a sale, the font size, style, and case of the type used in publicizing the

part of the sale is to be held without reserve may not differ from the font size, style, and case used to publicize the part of the sale to be held with reserve;

(7) An auctioneer shall disclose the existence of any buyer's premium to be charged to a buyer at an auction sale. Such disclosure shall be made in all published advertising and disclosed prior to the start of an auction.

Source: 20 SDR 18, effective August 16, 1993.

General Authority: SDCL ~~36-21A-89~~ 36-21A-89(7).

Law Implemented: SDCL ~~36-21A-71~~ 36-21A-71(29), 36-21A-72, 36-21A-89.

20:69:06:07. Auction sale procedure. A real estate auction may not begin until the announced and advertised time and date, and may only occur at the announced and advertised place of the sale. All efforts of selling shall cease at the end of the sale or at the time of the announcement of no sale. If property being sold by auction is put up in tracts, each tract is the subject of a separate sale. ~~Such a~~ Any sale is with reserve unless the real estate being sold is explicitly put up without reserve. ~~In an auction with reserve the auctioneer may withdraw the real estate being offered for sale at any time until announcing completion of the sale.~~ A bidder may retract a bid until the auctioneer's announcement of completion of the sale auction, but a bidder's retraction does not revive any previous bid. ~~If the auctioneer knowingly receives a bid on the seller's behalf or the seller makes or procures such a bid and notice has not been given that liberty for such~~

~~bidding is reserved, the buyer may either avoid the sale or take the real estate at the price of the last good faith bid prior to the completion of the sale.~~

A Each sale at auction is complete when the auctioneer announces its completion by the fall of the hammer or in any other customary manner.

Source: 20 SDR 18, effective August 16, 1993; transferred from § 20:69:06:01.

General Authority: SDCL ~~36-21A-89~~ 36-21A-89(7).

Law Implemented: SDCL 36-21A-1, 36-21A-72, 36-21A-89

20:69:06:07.01. Auction with reserve sale procedure. In an auction with reserve, the auctioneer may withdraw the real estate being offered for sale at any time until announcing completion of the sale. If the seller or an authorized representative of the seller will be allowed to bid at an auction, the auctioneer must give notice for such bidding prior to receiving any bids.

A minimum acceptable price may be disclosed with seller's written permission.

Source:

General Authority: SDCL 36-21A-89(7).

Law Implemented: SDCL 36-21A-1, 36-21A-72, 36-21A-89.

20:69:06:07.02. Absolute auction sale procedure. In an absolute auction, the seller or anyone acting upon behalf of the seller may not bid at the absolute auction or

otherwise participate in the bidding process. The real estate being offered for sale at an absolute auction may not be withdrawn after an auctioneer calls for bids unless no bid is made within a reasonable time.

Source:

General Authority: SDCL 36-21A-89(7).

Law Implemented: SDCL 36-21A-1, 36-21A-72, 36-21A-89.

20:69:06:07.03. Secured party or lien holder not prohibited from bidding at an absolute auction – Conditions. Compliance with § 20:69:06:07.02 does not prohibit a secured party or other lien holder who is not the seller from bidding at an absolute auction sale, as long as such bidding does not constitute the direct or indirect establishment , or an agreement to the establishment, of a reserve price on the property by the seller or by the auctioneer or by anyone aiding, assisting, or acting upon behalf of, the seller or the auctioneer.

Source:

General Authority: SDCL 36-21A-89(7).

Law Implemented: SDCL 36-21A-72, 36-21A-89.

20:69:06:07.04. Internet auction sale procedure. In an Internet auction sale, the auctioneer must validate a buyer’s capability to participate in the sale by obtaining the

buyer's name, address, e-mail address, phone number, and ability to legally enter into a contract. In addition, the auctioneer shall obtain an agreement to the terms of the auction procedure from any buyer wishing to participate in the sale.

Source:

General Authority: SDCL 3 6-21A-89(7).

Law Implemented: SDCL 36-21A-1, 36-21A-72, 36-21A-89.

20:69:06:08. Auctioneer to maintain records. ~~Auctioneers~~ An auctioneer must maintain copies of all agreements, listing contracts, handbills, advertisements, ~~closing statements~~ and other pertinent records, including closing statements if the auctioneer represented the seller through the closing of the transaction and any auction recordings whether audio, video, or audiovisual if the auction was recorded, for a period of four years. The records are subject to audit by the commission.

Source: 5 SDR 12, effective August 14, 1978; 12 SDR 102, effective December 22, 1985; 12 SDR 151, 12 SDR 155, effective July 1, 1986; 15 SDR 100, effective January 10, 1989; transferred from § 20:56:12:23, 20 SDR 18, effective August 16, 1993.

General Authority: SDCL 36-21A-89(7).

Law Implemented: SDCL 36-21A-1, 36-21A-6, 36-21A-47, 36-21A-83.

20:69:06:09. Certain bids acts prohibited. Prohibited acts include the following:

~~An auctioneer may not knowingly receive or use "rafter bids" or "puffing" of bids. A "rafter bid" or "puffing" of bid means a fictitious bid.~~

- (1) Knowingly receiving or using a rafter bid, puffing of a bid, or any type of bid rigging such as utilizing the services of a shill;
- (2) Knowingly permitting an unlicensed individual to call or take bids in an auction sale; or
- (3) Knowingly misleading or creating a false impression among the seller, buyer, or bidders in the advertising, conduct, and closing of an auction.

Source: 5 SDR 12, effective August 14, 1978; 12 SDR 151, 12 SDR 155, effective July 1, 1986; 15 SDR 100, effective January 10, 1989; transferred from § 20:56:12:24, 20 SDR 18, effective August 16, 1993.

General Authority: SDCL 36-21A-89(7).

Law Implemented: SDCL 36-21A-1, 36-21A-6, 36-21A-27, 36-21A-47, 36-21A-68, 36-21A-71, 36-21A-72.

20:69:06:10. Rules applicable to real estate ~~licensees~~ brokers, broker associates, and salespersons. A real estate ~~licensee~~ broker, broker associate, or salesperson acting as an auctioneer must follow the provisions of this chapter. Unless inconsistent with this chapter, a person licensed as an auctioneer must follow the provisions of chapter 20:69:03 and SDCL chapter 36-21A.

Source: 5 SDR 12, effective August 14, 1978; 12 SDR 151, 12 SDR 155, effective July 1, 1986; 15 SDR 100, effective January 10, 1989; transferred from § 20:56:12:25, 20 SDR 18, effective August 16, 1993; 21 SDR 125, effective January 23, 1995.

General Authority: SDCL 36-21A-89(7).

Law Implemented: SDCL 36-21A-1, 36-21A-6, 36-21A-27, 36-21A-30, 36-21A-47, 36-21A-68, 36-21A-71.

20:69:11:04. Requirements -- Exceptions. A licensee who has been licensed by the commission for one year or more preceding the date by which continuing education requirements must be completed must meet the continuing education requirements. A licensee whose license is on file in the commission's office on inactive status is not required to meet the requirements. A licensee on inactive status who wishes to activate the license must complete 24 hours of continuing education within the licensee's current licensing period or within two years preceding the licensee's current licensing period. The 24 hours of continuing education may not be used for both activating a license and renewing a license. A nonresident licensee licensed in this state is not required to meet this requirement. However, a nonresident licensee whose license in this state is on inactive status shall submit, prior to activating that license, a certificate of licensure from the licensing agency of the state where the nonresident licensee maintains residency, stating the nonresident's license is on active status and in good standing and that no complaint is pending.

Source: 5 SDR 12, effective August 21, 1978; 10 SDR 54, effective December 5, 1983; 12 SDR 102, effective December 22, 1985; 12 SDR 151, 12 SDR 155, effective July 1, 1986; transferred from § 20:56:19:04, 20 SDR 18, effective August 16, 1993; 35 SDR 305, effective July 1, 2009.

General Authority: SDCL 36-21A-89(3).

Law Implemented: SDCL 36-21A-65.